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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/851,465	05/05/1997	EDGAR C. ROBINSON	INT21246	5986

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CANADA

EXAMINER
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SUERETH, SARAH ELIZABETH

ART UNIT	PAPER NUMBER
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3749

MAIL DATE	DELIVERY MODE
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08/17/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 08/851,465	<b>Applicant(s)</b> ROBINSON ET AL.	
	<b>Examiner</b> SARAH SUERETH	<b>Art Unit</b> 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 4/1/11.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 4/1/11 has been entered.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the teaching of a perforated burner tube downstream of the nozzle, does not reasonably provide enablement for the limitation that the perforations are located "immediately adjacent" the nozzle. Figure 5A, for example, shows perforations (120) at a distance spaced from the nozzle (102). The specification does not enable any person skilled in the art to which it pertains, or with

which it is most nearly connected, to make or use the invention commensurate in scope with these claims.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. As discussed above, claim 1 has been amended to include the recitation of perforations which are located "immediately adjacent" the nozzle. However, it is unclear from the claim if the perforations are intended to be the openings shown in the sides of the burner tube (120), the perforations in spacer plates (124), or the perforations supplying air to the nozzle (115).

7. For Examination purposes, the examiner has regarded the claims as referring to the perforations in the sidewalls of the burner tube (120), but applicant is requested to clarify if the claim is intended to read on the perforations in the sideways spacing plates (124) or at the nozzle outlet (115).

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. **Claims 1, 2, and 4-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over **U.S. Patent No. 3,428,406 to Nutten et al.** ("Nutten") in view of **U.S. Patent No. 3,245,458 to Patrick et al.** ("Patrick") and **U.S. Patent No. 4,061,463 to Bennett** ("Bennett").

Nutten discloses in Figures 1-32 a liquid fuel burner assembly in the same field of endeavor as applicant's invention and similar to that described in applicant's claims 1, 2, and 4-8. **(Bolded text below references elements and sections from the prior art.)**

In particular, in regard to at least claim 1, Nutten shows a burner assembly comprising a burner tube **(cylindrically shaped member 16 that includes hollow sleeve/tube 18, see col. 4, lines 10-13)**, an air aspirated nozzle **(40)**, a compressor to provide air under positive pressure to the air aspirated nozzle **(see at least col. 4, lines 66-69 describing that air is compressed in pump chamber 22)**, a fuel supply tank

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(54) to supply liquid fuel in liquid form and at ambient pressure to the air aspirated nozzle (see col. 4, lines 42-49), the fuel entering the nozzle under negative pressure created by air entering the air aspirated nozzle under positive pressure (see at least col. 4, lines 50-56). Fuel and air being mixed within the air aspirated nozzle and being combusted substantially with the burner tube (18) immediately adjacent to and downstream from the air-aspirated nozzle (40) (see at least col. 4, lines 50-56).

In regard to the recitation of a metering valve, this limitation is considered met by at least the valve (160) of Nutten. The valve (160) is operated to control the flow of fuel to the burner nozzle (40). This valve may completely shut off the fuel flow but is also described as being operated in a “partially open position” (see col. 7, lines 36-40) and may “reduce or shut off” the flow of fuel (see col. 8, lines 56-61). This disclosure of the valve being “partially open” and operating to “reduce” fuel flow is considered to suggest a valve positioned as recited that functions to meter the fuel as recited in applicant’s claim.

In regard to at least claims 2 and 4, the burner assembly of Nutten further includes a zero pressure regulator (see the diaphragms 94, 142, Fig. 5) contained within the control unit (60) that function to control fuel flow in the event of failure of the air flow, and pressure actuated arrangements for controlling flow of liquid fuel to the burner (see at least col. 2, lines 22-40 and col. 9, lines 14-34 describing the operation of the pressure responsive diaphragms in unit 60).

In regard to at least claim 5, note fuel supply is a fuel tank (54).

In regard to at least claim 6, the pump chamber/compressor **(22)** is operatively connected to the fuel tank **(54)** to create suction in the fuel tank **(see col. 4, lines 46-41)**.

In regard to at least claim 7, at least valve **(110)** within control unit **(60)** has a first and second position such that in a first position vacuum from the compressor is applied to the fuel tank and in a second position the compressor is isolated from the fuel tank **(see at least col. 7, line 41 through col. 8, line 5)**.

In regard to at least claim 8, manual valve **(58)** is provided to isolate the fuel tank and air aspirated nozzle such that in a first position fuel is allowed to pass to the nozzle and in a second position fuel is isolated from the nozzle **(see col. 4, lines 42-44 and col. 7, lines 49-52)**.

Nutten does not disclose that the burner is an infrared burner that includes a burner tube that has a perforated outer surface.

However, Patrick is cited to remedy this deficiency. Patrick teaches a liquid fuel fired burner that is considered analogous art to both applicant's invention and Nutten. The liquid fuel burner of Patrick is expressly noted to be an infrared burner **(see col. 1, lines 8-9)**. This infrared burner includes a burner tube that includes a burner tube that is perforated that is typical of infrared burner assemblies **(see Fig. 7 showing a burner tube 510 that includes perforations 514 and 518e in outer surfaces 512 and 518)**.

Bennett is cited to provide clear motivation as to why one of ordinary skill in the art would be prompted to modify the burner assembly of Nutten to be arranged in the

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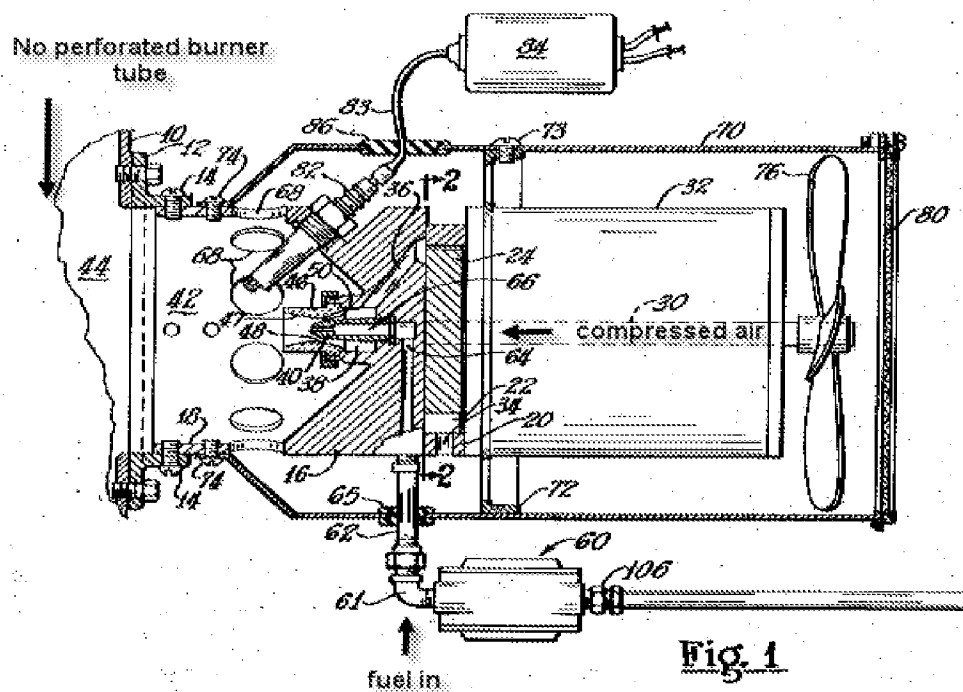
form of an infrared burner having a perforated burner tube. Bennett shows a liquid fuel burner that is considered analogous art to each of applicant's invention, Nutten, and Patrick. In Bennett, it is expressly noted that infrared burners are characterized in that combustion occurs "against an incandescent surface" (**see Bennett, col. 3, lines 24-27**) and are a preferred category of burner because of their cleanliness and efficiency (**see Bennett, col. 3, lines 15-17**). Further, Bennett also clearly provides that liquid fuel burners (such as each of Nutten and Patrick) are understood to be more susceptible to flame quenching than gas fuel burners (**see Bennett, col. 3, lines 18-23**). Flame quenching producing undesirable soot that is detrimental to industrial finishes and other heating processes (**Id.**). Accordingly, liquid fuel burners are desirably formed as infrared burners to minimize the possibility of flame quenching since combustion in these types of burners occurs against an incandescent surface of the burner (such as the perforated burner tube of Patrick), which is generally at a temperature of 1600 to 2500 degrees Fahrenheit and is above the quenching temperatures (**see Bennett, col. 3, lines 23-27**).

Therefore, in regard to claim 1, 2, and 4-8, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burner tube of Nutten to be formed as a perforated burner tube, thus allowing Nutten to operate as an infrared burner, as shown in Patrick as infrared fuel burners are recognized for their cleanliness and efficiency (**see Bennett, col. 3, lines 15-17**), and in the case of liquid fuel burners, operation of a burner as an infrared burner to minimize the possibility of flame quenching since combustion in these types of burners occurs



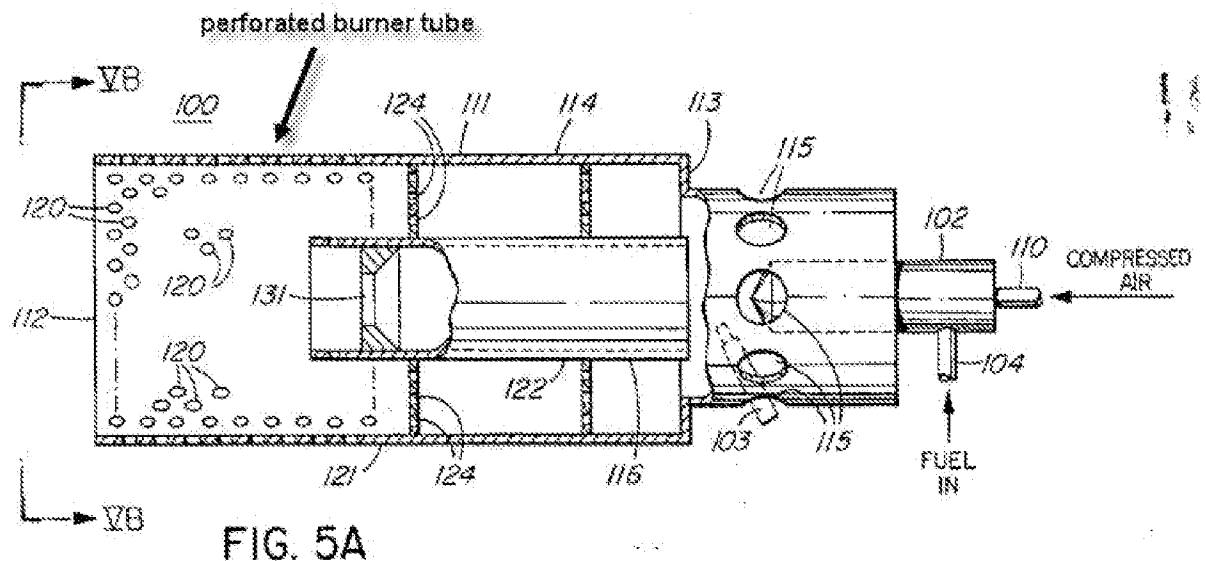
against an incandescent surface of the burner, which is generally at a temperature of 1600 to 2500 degrees Fahrenheit and is above the quenching temperatures (**see Bennett, col. 3, lines 23-27**).

**Segment of Fig. 1 of Nutten** (the examiner has added the lead arrows and text appearing below).



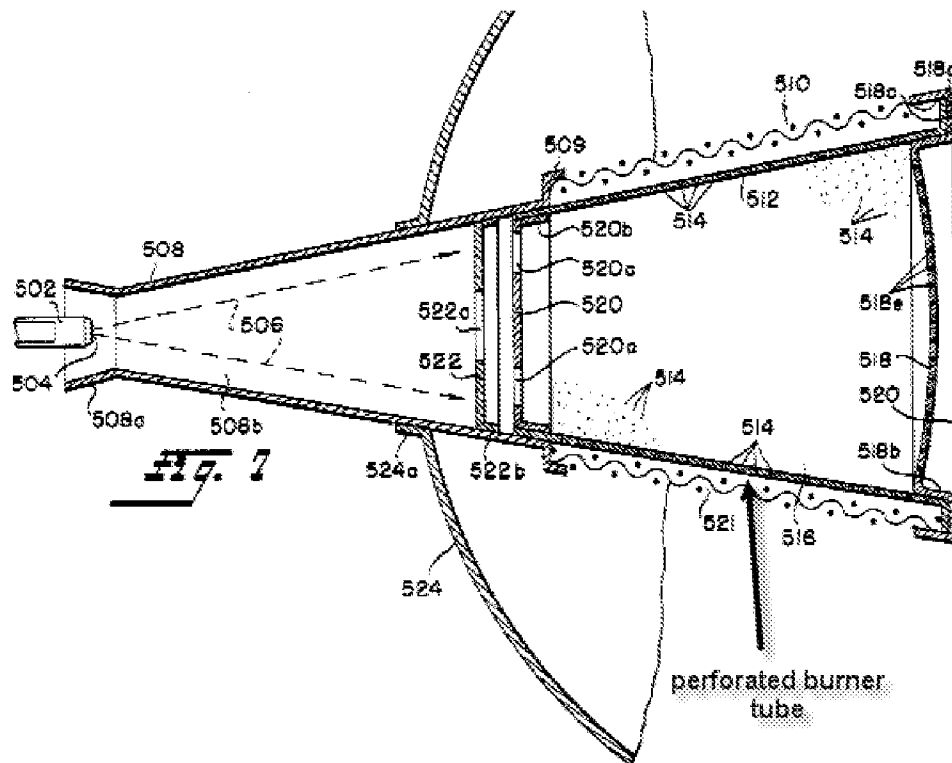
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**Rotated Copy of Applicant's Fig. 5A** (the examiner has added the lead arrow and "perforated burner tube" text appearing below).



As discussed and above and illustrated in the segments of applicant's Fig. 5A and Nutten's Fig. 1, Nutten discloses all the elements of applicant's claim 1 with the exception of a burner tube with a perforated outer surface rendering the burner an "infrared burner." However, the examiner has pointed to Patrick showing the use of a perforated burner tube in the burner art forming an "infrared burner." The following is a segment of Fig. 7 of Patrick which is disclosed as being an infrared liquid fuel burner (next page):

**Segment of Fig. 7 of Patrick** (the examiner has added the lead arrow and text appearing below).



As seen in the above Figures, and noted in the above 112 rejections, the scope of the new claim limitation that the burner tube has perforations extending immediately adjacent the nozzle is unclear. However, Patrick is regarded to teach this limitation, as Patrick shows a liquid fuel nozzle (502) upstream of a perforated burner tube (514). To the extent the perforated burner tube of applicant is “immediately adjacent” the fuel nozzle, the Patrick burner tube is regarded as being “immediately adjacent” to the nozzle, as they show the same configuration.

4. **Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Nutten** in view of **Patrick** and **Bennett** as applied to claim 2 above, and further in view of **U.S. Patent No. 3,361,183 to Reichhelm** ("Reichhelm").

Nutten in view of Patrick and Bennett suggest substantially all the limitations of claim 3 (note discussion above) with the possible exception that the fuel metering valve is specifically a manually adjustable valve. The examiner does note that the shut off valve **(58)** is described as being manually operable (**see col. 7, line 44**), however, the valve **(160)**, which functions as the recited fuel metering valve, is not expressly disclosed as being "manually adjustable".

Reichhelm teaches a liquid fuel burner in the same field of endeavor as both applicant's invention and Nutten. In Reichhelm, the burner includes a liquid fuel control **(22)** valve that is interposed within the liquid fuel line (**see col. 4, lines 60-62**) to desirably allow metering of the fuel flow during operation of the burner to contribute to the production of desired flame settings (**see col. 6, lines 1-4**) and to achieve desired characteristics of burner performance (**see col. 5, lines 54-57**). As shown particularly in Fig. 2, valve **(22)** includes a handle that is rotated in order to allow the metering of the fuel. Accordingly, this valve is considered a metering valve that is manually adjustable as recited in applicant's claim 3.

Therefore, in regard to claim 3, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the fuel control valve (at least 160) of Nutten to incorporate manual adjustability as taught Reichhelm as such manual operation is clearly recognized in the art for the desirable purpose of

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controlling air and fuel ratio during operation of the burner to contribute to the production of desired flame settings (**see Reichelm, col. 6, lines 1-4**) and to achieve desired characteristics of burner performance (**see Reichelm, col. 5, lines 54-57**).

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH SUERETH whose telephone number is (571)272-9061. The examiner can normally be reached on Mondays through Friday 8:00AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven McAllister, can be reached (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sarah Suereth/

Examiner, Art Unit 3749

/STEVEN B. MCALLISTER/

Supervisory Patent Examiner, Art Unit 3749